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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 1239/2015; I.A.No.15101/2018 (under Order VI Rule 17 CPC by D-1); I.A.No.8861/2019; I.A.No.8862/2019 (under Section 2, 3 & 4 of the Partition Act by plaintiff); I.A.No.1703/2020 (under Section 151 CCP by D-1 for directions) & I.A.No.857/2021 (under Section 151 CPC filed by D-1 objecting to the valuation report submitted)

DINESH MADAN

..... Plaintiff

Through: Mr. Shailendra Paul, Adv.

versus

ANIL MADAN & ANR

..... Defendant

Through: Ms. Sonia Madan, Adv. for D-1
(Mobile No.7827294990)
Mr. Ashish Mohan & Ms.
Sagrika Tanwar, Adv. for D-2
Mr. Ankit Jain, Adv. for D-3

CORAM:
JOINT REGISTRAR (JUDICIAL) SH. MANISH
SHARMA, (DHJS)

ORDER
04.02.2023

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I.A.No.19487/2022 (under Section 151 CPC filed on behalf of defendant no.1 against the filing of written statement by the defendant no.3)

1. No reply to the captioned IA has been filed.
2. Learned counsel for plaintiff submits that he does not wish to file reply and he has no objection, if the



captioned IA is allowed. Learned counsel for defendant no.3 submits that he does not wish to file reply and he will straightway argue the same.

3. Arguments heard. Record perused.
4. The Hon'ble Court has passed preliminary decree in this partition suit vide order dated 01/04/2019. Thereafter Ms. Bimla Madan was impleaded as defendant no.3 in the present case vide order dated 25/03/2022 passed by the Hon'ble Court. Learned counsel for defendant no.3 submits that written statement was filed by defendant no.3 on 15/07/2022 vide diary no.1175131. He submits that the written statement has been filed by defendant no.3 beyond the stipulated period of 90 days, however, same has been filed within the extended period of 120 days. It is submitted that the defendant no.3 wants to file written statement for the purpose of record and it will have no bearing on the preliminary decree passed by the Hon'ble Court.
5. Learned counsel for defendant no.1 submits that defendant no.3 is supporting the case of the plaintiff. However during the course of arguments, learned counsel for defendant no.1 submits that though there is delay in filing the written statement by defendant no.3, however, same may be taken on record subject to cost and the captioned IA filed by defendant no.1 may be disposed of accordingly.
6. In s '*Bharat Kalra Vs. Raj Kishan*' 2022 LiveLaw (SC)465 it was held that "*Second proviso to Order VIII Rule 1 CPC vests the court with discretion to condone*



delay in filing the written statement provided a total time period of 120 days from the date of service of summons had not elapsed. It is in this context that the petitioner/defendant was required to explain why he did not file the written statement immediately in June, 2020 and waited for a further period of almost three months to file the written statement. It would have been probably different had the first 30 days of limitation being available when the lockdown was enforced, as in that event, without a doubt, the limitation would have been enlarged in terms of the directions of the Supreme Court”.

7. In view of the above, written statement filed by defendant no.3 is taken on record subject to cost of Rs. 5,000/- to be paid to defendant no.1. Plaintiff is at liberty to file replication within three weeks with advance copy.
8. With the aforesaid observations, the captioned IA stands disposed of.

CS(OS) 1239/2015

9. Re-notify the matter along with connected case i.e. CS (OS) 626/2016 on **09th March, 2023**.

MANISH SHARMA, (DHJS)
JOINT REGISTRAR (JUDICIAL)
FEBRUARY 4, 2023/nk
[Click here to check corrigendum, if any](#)